

MAY 22 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID TARVER,

Petitioner - Appellant,

v.

STATE OF WASHINGTON; MAGGIE
MILLER-STOUT,

Respondents - Appellees.

No. 06-35218

D.C. No. CV-05-05237-FDB

MEMORANDUM *

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA and GOULD, Circuit Judges.

Washington state prisoner David Tarver appeals pro se from the district court's judgment dismissing his 28 U.S.C § 2254 petition as unexhausted and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

procedurally barred. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

Tarver contends the district court erred by dismissing his § 2254 petition for failure to exhaust state remedies, because the failure to do so was caused by his lack of access to legal materials and a law library while he was in transport. We reject this contention because Tarver has failed to show how the alleged inadequate access prevented him from filing a timely petition, or a timely motion for an extension of time, especially in light of the fact that his first request for an extension of time was not filed until four months after the time period he was in transport. *See Hiivala v. Wood*, 195 F.3d 1098, 1106 (9th Cir. 1999). Accordingly, the district court's judgment dismissing the petition as unexhausted and procedurally barred is affirmed. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 844, 848 (1999).

AFFIRMED.